

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ART CAPITAL GROUP, LLC and ART CAPITAL
GROUP, INC.,

Plaintiffs,

-against-

FINE ART CAPITAL, LLC and EMIGRANT BANK,

Defendants.

SCHEDULING ORDER

07 Civ. 3879 (SAS)

Conference Date:
July 2, 2007

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) on June 15, 2007 (the "Order"); and

WHEREAS the Order requires that the parties jointly prepare and sign a proposed scheduling order containing certain information;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

(1) The date of the Rule 16 conference is July 2, 2007, 3:00 p.m. The appearances for the parties are:

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Attorneys for Defendants
*Fine Art Capital, LLC and
Emigrant Bank*

(2) A concise statement of the issues as they now appear:

Plaintiffs assert that Defendants have infringed various trademark, trade dress, copyright and competition rights in violation of federal and state laws. Specifically, in addition to unfair competition claims, Plaintiffs allege that the trade name FINE ART CAPITAL infringes on the trademark ART CAPITAL GROUP. Plaintiffs also allege that Defendants' website, <fineartcapital.com>, infringes trade dress and copyright rights of Plaintiff in its website, <artcapitalgroup.com>.

Defendants deny these claims and Counterclaim against Plaintiff Art Capital Group, Inc., asserting that the trademark ART CAPITAL GROUP is descriptive and has not acquired distinctiveness and that the federal registration for the mark should be cancelled. Defendants have also asserted the equitable defenses of laches, waiver, acquiescence and estoppel. With respect to Plaintiffs' copyright claim, Defendants assert that Plaintiffs' website is neither original to Plaintiffs nor copyrightable subject matter.

Art Capital Group, Inc. denies Defendants' Counterclaim.

(2)

(3) Schedule:

(a) Depositions and deponents:

Subject to the parties identifying additional witnesses during discovery whose depositions may be noticed, Plaintiffs intend to take the deposition of Andrew Augenblick, Fine Art Capital, Emigrant Bank, those individuals affiliated with Emigrant Bank who have relevant information concerning the allegations in the Complaint and Counterclaims, and any experts designated by either Defendant to testify at the trial. Defendants intend to take the depositions of Ian Peck, Baird Ryan, Art Capital Group, LLC, Art Capital Group, Inc.; and any experts designated by either Plaintiff to testify at the trial. The parties will schedule these depositions in order to complete them by January 15, 2008.

Initial Dispositions July 16, 2007

(b) Production of Documents:

The parties will produce documents on or by September 7, 2007.

(c) Dates to exchange expert reports and take expert depositions:

(i) The parties will exchange reports of their designated experts by November 15, 2007;

(ii) each expert's deposition will be completed by January 15, 2008.

(d) Completion of Discovery:

Discovery will be completed by January 15, 2008.

(3)

(e) Date by which Plaintiff will supply its pre-trial order matters to Defendant:

~~March 3, 2008.~~

(f) Date by which parties will submit a pre-trial order:

~~April 4, 2008.~~

(g) The final pre-trial conference, pursuant to Fed. R. Civ. P. 16(d), will be held

January 24 at 4:30.

(4) The parties shall endeavor to agree to the terms of a suitable Protective Order.

(5) Issues on which counsel are unable to reach agreement:

None.

(6) The anticipated fields of expert testimony are damages; likelihood of confusion; electronic chronology of development of Plaintiffs' website; and relatedness of the respective parties' services in the field of art capitalization and finance.

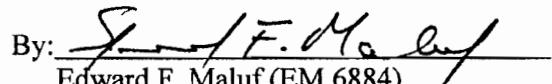
(7) The anticipated length of trial is five days, with jury.

(8) The Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference for when justice so requires.

(4)

Dated: New York, NY
June 29, 2007

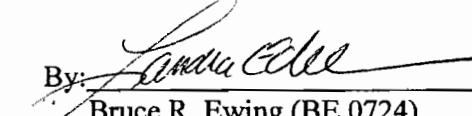
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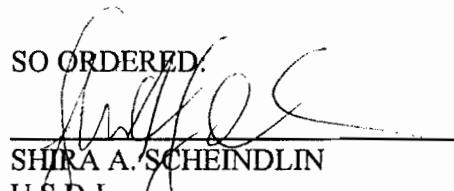
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SO ORDERED.


SHIRA A. SCHEINDLIN
U.S.D.J.

7/2/07

(5)